



August 23, 2000

Mr. Tommy Lueders
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2000-3233

Dear Mr. Lueders:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138250.

The City of Midland (the "city") received a request for information related to two specified individuals and a specified location during a specified time period. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108(a)(1) of the Government Code and by section 731.002 of the Transportation Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality provisions such as Family Code section 58.007. Juvenile offender records held by law enforcement agencies concerning conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c) of the Family Code. We have marked the materials to indicate the information which must be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

You claim that the submitted information is excepted from disclosure by Government Code section 552.108(a)(1). Information in the hands of a law enforcement agency may be withheld under this section if "release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). We generally presume that section 552.108(a)(1) excepts information that relates to a pending or ongoing investigation or prosecution. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978). You relate that charges have been filed against the requestor for the crime of misuse of official information, and that this prosecution

is currently pending. You represent that the submitted information is related to that case. However, from our review of the submitted materials we note that you have submitted information which appears to encompass a greater scope than requested. Further, you have not demonstrated, and it is not apparent from the face of the submitted information, how the submitted information relates to the pending prosecution. We conclude that you have not demonstrated that the submitted information is excepted from disclosure under section 552.108(a)(1).

The submitted documents include information excepted under section 552.130 of the Government Code.¹ This section governs the release and use of information obtained from motor vehicle records, and provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
[or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold driver's license numbers, VIN numbers, and the license plate numbers pursuant to section 552.130.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

¹You have raised section 731.002 of the Transportation Code for this information. As section 552.130 of the Government Code applies to this information, your argument under the Transportation Code is not addressed.

will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael Jay Burns".

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 138250

Encl Submitted documents

cc: Mr. James D. McFadden
4736 West Dengar Avenue
Midland, Texas 79707
(w/o enclosures)